

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 269 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes

2. To be referred to the Reporter or not? Yes

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3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

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VALLABHBHAI K PATEL

Versus

STATE OF GUJARAT

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Appearance:

MR BD KARIA for Petitioners

MR KAMAL M. MEHTA, AGP for Respondent No. 1

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CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 30/07/97

ORAL JUDGEMENT

1. The present Civil Revision Application is filed under Section 115 of the Code of Civil Procedure by the original plaintiffs mainly against the State of Gujarat, respondent No.5, obviously because the dispute is about the payment of court fee on the relief prayed. The other

parties, namely, the rest of the defendants are not necessary in deciding the question in issue, hence they are rightly deleted vide order dated 15th of February, 1994.

2. The petitioners - plaintiffs have instituted Regular Civil Suit No. 170 of 1988 in the court of Civil Judge, Senior Division, Gondal and in the said suit there were four defendants. At the time of the institution of the suit, the plaintiffs have, for the purpose of court fee and jurisdiction, valued the suit at Rs. 300 and have paid the court fee of Rs.30/-. If one refers to the relief clause in para-9 of the plaint, plaintiffs have by para 9(1), inter alia, prayed that the defendants have by registered document, registered at No.56, executed a gift deed and since the properties in question are ancestral joint Undivided Hindu family properties, such gift deed is for the reasons stated in the plaint obtained by fraud and is not binding as it is executed in bad faith under pressure and coercion and the same was therefore not binding on the plaintiffs and, therefore, it should be set aside as null and void. By para 9(2), it was inter alia prayed that it should be declared that the immovable property which was covered by the gift deed was one in which the plaintiffs have interest and their share in such property be set apart.

3. It may be noted at this stage that in the plaint, the defendant No.1 is the father and defendant No.4 is the son, the defendants No. 2 and 3 are the wife and son of defendant No.4 and obviously the gift deed in question is in favour of defendants No.2 and 3. The plaintiffs No. 1 to 3 are the sons of defendant No.1 and, therefore, on going through the entire plaint as well as the relief clause, their main challenge is to the legality and validity of the gift deed allegedly executed by defendant No.1 in favour of the defendants No. 2 and 3.

4. The suit was presented in the court on 20th September, 1988 and on 17th June, 1989, it resulted into compromise as consent terms were filed in the court and the suit was disposed of in terms of the consent terms.

5. It is thereafter that on 8th of August, 1989, the Inspecting Officer of the court fees on examination of the plaint and more particularly the relief clause, submitted the report under Section 12 of the Bombay Court Fees Act,1959 to the effect that the plaintiffs have filed the suit to set aside the registered gift deed dated 13th of January, 1986 by defendant No.1 in favour

of defendants No. 2 to 4 of the properties which were alleged to be the ancestral property. The defendant No.1 is admittedly the father of the plaintiff and defendant No.4. They have also applied for consequential relief of permanent injunction restraining the defendants from disposing of the said properties. In his report he found that the suit filed by the plaintiffs was thus to set aside the gift deed dated 13th of January, 1986. Under the gift deed, the property was given by the father of the plaintiffs to the wife and son of defendant No.4 and, therefore, the plaintiffs were required to pay full ad valorem court fees on the value of such alienation. He found that the plaintiffs have mentioned the value of the properties covered by the gift deed from the gift deed itself. The said value was stated to be Rs. 49,000/-. The plaintiffs were, therefore, liable to pay full court fees of Rs. 2,500/- as against which they have only paid court fees of Rs. 30/-. The deficit court fees was found to Rs. 2,470/- which the plaintiffs were called upon to pay. He also noted that the plaintiffs have valued the suit under Section 6(iv)(j) of the said Act. He found that the provision under Section 6(iv)(j) of the Bombay Court Fees Act is only a residuary provision and applies only when the other provisions of the Act do not apply and secondly he found that same was applicable when the subject matter of the suit was not susceptible to monetary valuation. In that view of the matter, he submitted his report on 8th of August, 1989. It appears that the trial court has thereupon accepted the reference and the plaintiffs were called upon to pay the deficit court fee of Rs. 2,470/within ten days. The order was passed by the trial court on 1st of may, 1994.

6. Against the order of the trial court, the plaintiffs preferred Civil Misc. Appeal No. 31 of 1992 in the Court of Second Extra Assistant Judge, Gondal and such appeal came to be dismissed with costs on 29th of October, 1993. This is obviously because the appeal of this nature was not maintainable and the order passed by the court accepting the report of the Inspecting Officer (Court fees) can be assailed in the High Court under Section 115 of the Code of Civil Procedure.

7. Mr. B.D.. Karia, learned Counsel appearing for the petitioners has very vehemently submitted before this court that on proper reading of the relief clause in para 9 of the plaint, the suit is squarely fall within the provisions under Section 6(iv)(j) of the Bombay Court Fees Act and in support thereof he has cited number of authorities. On the other hand, Mr. K.M. Mehta,

learned Assistant Government Pleader has submitted that the relief claimed was susceptible to monetary valuation and the court fee was liable to be paid under clause (5) of Schedule-I of the said Act.

8. It may be noted at this stage that though the suit was presented on 20th September, 1988, actually, the consent terms were filed on 11th of June, 1989 and the Inspecting Officer (Court fees) has submitted his report on 8th of August, 1989 which is accepted by the court on 9th of May, 1991.

9. In the aforesaid fact situation, the fact that the suit has ultimately resulted into filing of consent terms and recording thereof on 17th of June, 1989 would not make any difference because what is to be seen is the power of the Inspecting Officer (Court fees) under the provisions of the Bombay Court Fees Act, 1959 more particularly Section 12(2) of the said Act. Section 12 of the said Act deals with appointment of Inspecting Officer and recovery in cases reported by them and sub-section (2) of Section 12 reads as under :

12(2): The inspecting officer may, subject to the control of the Court concerned, examine the records of any case which is pending or has been disposed of with a view to finding out whether proper fees have been paid therein.

10. On going through the aforesaid provision, there is no manner of doubt that the Inspecting Officer of the court fees may subject to the control of the court concerned, examine the records of any case which is pending or has been disposed of with a view finding out whether proper fees have been paid therein. The power of the Inspecting Officer of the court fees, therefore, is exercisable even after the case is disposed of and such power is to be exercised with a view to finding out whether proper fees have been paid on the plaint by the plaintiffs or not. The submission of Mr. B.D. Karia therefore that the suit ultimately resulted into filing of the consent terms on 17th of June, 1989 and the report was submitted by the Inspecting Officer of the court fees on 8th August, 1989 i.e. subsequent to the disposal of the suit by recording consent terms by the court, would not assume any importance and only question which is required to be decided is as to whether, based on the relief claimed in the relief clause, court fee paid on the plaint was just and proper or was deficit court fees.

The Inspecting Officer of the court fees has the power to submit his report even after the disposal of the suit and on going through the report of the Inspecting Officer of the court fees which is accepted by the court, in my opinion, the order passed by the court below is unassailable and the plaintiffs are liable to pay the deficit court fees and I, therefore, do not find any substance in the submission made by Mr. B.D. Karia, learned counsel appearing for the plaintiffs and called upon the plaintiffs to pay the deficit court fees as found by Inspecting Officer in his report and as accepted by the competent court. The plaintiffs are directed to pay the deficit court fees of Rs. 2,470/- within eight weeks from today.

11. While issuing rule nisi in this Civil Revision Application, my brother Judge B.C.Patel on 23rd of March, 1994 while granting ad interim relief, inter alia directed that the plaintiffs shall file an undertaking within a period of two weeks in this court as well as in the trial court to the effect that in case they fail in this Civil Revision Application, they shall pay interest at the rate of 18 per cent on the amount of the deficit court fees if it is to be payable by them as per the order of the trial court. The Bombay Court Fees Act, 1959, unfortunately, does not make any provision for payment of interest on the deficit court fees and Mr. Kamal M. Mehta, learned Assistant Government Pleader as well as the Chief Inspecting Officer (Court fees) have fairly stated to the court that there is no provision for payment of interest on the deficit court fee in the entire Bombay Court Fees Act and if the plaintiffs are relieved from such undertaking, they cannot and do not have any objection under the statute. In my opinion, it is a fit case where the condition of imposition of payment of interest when it could not be imposed under the provisions of the statute should be one from which the plaintiffs should be relieved and no interest at the rate of 18 per cent shall be payable by the plaintiffs more particularly in view of the fact that the suit has ultimately resulted into compromise even much prior to the Inspecting Officer of the court fees taking objections and submitting his report to the deficit payment of court fee. The plaintiffs are, therefore, relieved from the aforesaid undertaking.

9. In the result, the Civil Revision Application fails. The rule is discharged. The ad interim relief is vacated. The plaintiffs are relieved from the undertaking filed in this court and they are directed to pay the deficit court fees within a period of eight weeks from

today.

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